

Amendments to the Drawings:

The attached drawing sheet includes changes to FIG. 2. This sheet, which includes FIGS. 1-2, replaces the original sheet including FIGS. 1-2. FIG. 2 is amended to show ridge 1a, which was shown in the originally filed application, but not claimed. Thus, no new matter is added.

Attachment: Replacement Sheet

REMARKS

I. Status of Claims

Claims 22, 25, 28-33, 36-41, and 43-53 are pending in the application, with claims 22, 43, and 51 being independent. Claims 22, 31, 32, 43, and 51 are currently amended. Claims 1-21, 23-24, 26-27, 34-35, and 42 were previously canceled. Claims 51-53 were withdrawn by the Examiner. Support for the additional claim language can at least be found in the FIGS. 1-4 and 7-8.

Claims 43-50 stand rejected under 35 U.S.C. 112, first paragraph, as allegedly failing to comply with the written description requirement.

Claims 22, 25, 28-32, 38-39, 43-46 stand rejected under 35 U.S.C. 102(b) as allegedly being anticipated by Zucherman et al. (USPUB 2001/0016743) ("Zucherman").

Claims 36-37 and 49 stand rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Zucherman.

Claims 33 and 47 stand rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Zucherman, as applied to claims 22 and 43 above, and further in view of Castro (USP 6,743,257).

Claims 40-41 stand rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Zucherman, as applied to claim 22 above, and further in view of Senegas (USP 6,761,720).

The Applicant respectfully requests reconsideration of these rejections in view of the foregoing amendments and the following remarks.

II. Applicant's Statement of Substance of Examiner Interview

In compliance with M.P.E.P. 713.04, the Applicant provides this Statement of Substance of Interview concerning the personal interview conducted May 26, 2010 with Examiner Fisher and Applicant's representative Daniel Shanley. The undersigned would like to thank the Examiner for the courtesies extended during the interview.

- (A) Exhibits. N/A.
- (B) Claims. 22, 43, and 51.
- (C) Prior art. Zucherman.
- (D) Amendments. Discussed possibly amending claim 22 (as well as withdrawn claim 51) to recite that "wherein the posterior portion tapers from the support surface in a direction opposite

to the anterior portion and towards a posterior end of the support (i.e., the intervertebral support).” Also, discussed amending claims 22, 43, and 51 to change “shoulder” to “ridge.”

(E) Principal arguments of Applicant. Zucherman neither anticipates nor renders obvious the inventions of claims 22, 43, and 51.

(F) Other matters. N/A.

(G) Results. Agreement was reached that amendments discussed would overcome rejections of record. Also, the Examiner again stated that if method claim was amended to include all of the structural limitations of an allowed apparatus claim, the claim would be rejoined with the application at that time (i.e., at allowance of the apparatus claim). Further, the Examiner agreed to consider the Applicant’s amendments after-final.

III. Rejoinder of Claim 51 upon Allowance of Claim 22

Method claim 51 has been amended to include all of the structural limitations recited in apparatus claim 22. Thus, as discussed in the personal interview, the Applicant respectfully requests rejoinder of claims 51-53 if claim 22 is allowed.

IV. 35 USC 112, first paragraph, Rejections

Claims 43-50 stand rejected under 35 U.S.C. 112, first paragraph, as allegedly failing to comply with the written description requirement.

The Applicant respectfully submits that claim 43 has been amended to obviate any perceived ambiguity. Thus, the Applicant respectfully requests withdrawal of these rejections.

V. Amendments to the Drawings and Specification

The attached drawing sheet includes changes to FIG. 2. This sheet, which includes FIGS. 1-2, replaces the original sheet including FIGS. 1-2. FIG. 2 is amended to show ridge 1a, which was shown in the originally filed application, but not claimed. Also, the specification is amended to be consistent with this change to the drawings. Thus, no new matter is added.

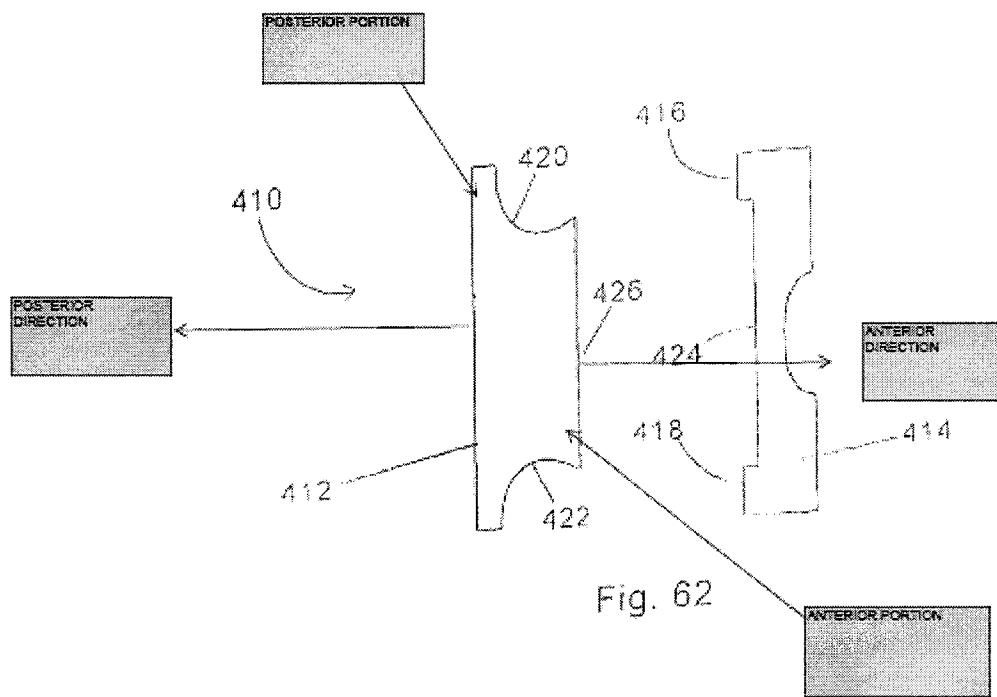
VI. Pending Elected Independent Claims

Independent claims 22 and 43 stand rejected under 35 U.S.C. 102(b) as allegedly being anticipated by Zucherman.

The Applicant respectfully submits that claim 22 is patentable over Zucherman at least because it recites an intervertebral support comprising, *inter alia*, "...wherein the posterior portion tapers from the support surface, in a direction opposite to the anterior portion, and towards a posterior end of the support (i.e., the intervertebral support)...."

The Applicant respectfully submits that claim 43 is patentable over Zucherman at least because it recites an intervertebral support comprising, *inter alia*, "...wherein the retaining member includes lateral shoulders set back from the anterior portion suitable for being received against the laminae of the vertebrae as close as possible to the articular facets...."

As discussed in detail in the personal interview, Zucherman neither discloses a posterior portion that tapers from the support surface in a direction opposite to the anterior portion and towards a posterior end of the support nor a retaining member including lateral shoulders.



Instead, as shown in FIG. 62, reproduced above, the alleged posterior portion of

Zucherman does not taper, much less taper from the alleged support surface in a direction opposite to the anterior portion and towards a posterior end/direction of the support itself, as required by claim 22. Also, FIG. 62 clearly does not show lateral shoulders as required by claim 43.

Therefore, lacking any teaching and/or suggestion of each and every element of the inventions of claims 22 and 43 (and 51 for that matter), Zucherman fails to anticipate the same. We note that “[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

Accordingly, the Applicant respectfully submits that, for at least these reasons, claims 22, 43, and 51, and their dependent claims, are patentable over the cited references.

VII. Conclusion

The Applicant respectfully submits that the present application is in all aspects in allowable condition, and earnestly solicits favorable reconsideration and early issuance of a Notice of Allowance.

The Examiner is invited to contact the undersigned at (202) 220-4420 to discuss any matter concerning this application. **The Office is authorized to charge any fees related to this communication to Deposit Account No. 11-0600.**

Respectfully submitted,

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APPENDIX

REPLACEMENT SHEET INCLUDING FIGS. 1-2